

Permit Case Number: TODP20-\_\_\_\_\_ Application Date: \_\_\_\_\_ 20 \_\_\_\_

Property Address: \_\_\_\_\_

Establishment Name: \_\_\_\_\_

Hours of Operation: \_\_\_\_ M \_\_\_\_ T \_\_\_\_ W \_\_\_\_ Th \_\_\_\_ F \_\_\_\_ S \_\_\_\_ Sun; from \_\_\_\_\_

**Applicant Information (Principal Operator of dining establishment):**

Name: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Email Address: \_\_\_\_\_

Are you the property owner? \_\_\_\_ Y/ N

**Property Owner Information (if different from applicant):**

Property Owner \_\_\_\_ Y / N Authorized Agent Acting on Behalf of the Property Owner \_\_\_\_ Y / N

Name(s): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Email Address: \_\_\_\_\_

**Zoning Administrator Approval:**

**Date:**

**REQUIRED APPLICATION SUBMISSION MATERIALS**

- ☐ Written authorization or signature from the property owner if the principal operator is not the property owner;
- ☐ A plan which clearly shows the following:
  - o dimensions showing the layout and arrangement of the proposed outdoor seating area, including its overall dimensions, aisle widths, access to the adjacent building and restrooms, the locations of chairs, tables, umbrellas, barriers, and all other appurtenances to be located within the boundaries of the proposed outdoor seating area; if outdoor dining is located in a designated parking area, please show the location of available parking and identify traffic control measures.
  - o a copy of the Capacity Certificate for the establishment.
  - o If requesting a location on town-owned property: A Certificate of Insurance showing that the Town of Herndon and its employees, volunteers, and agents have been added as

additional insureds to the applicants' Business Liability Insurance and, if applicable, Liquor Liability Insurance. The endorsement to the policy showing that the Town et al. has been added to the policy is also required. If the policy has additional insured language required by contract, please attach that portion of the policy to the Certificate of insurance.

- If requesting a location on town-owned property, execute the Temporary Outdoor Dining Use Agreement.
  - Town property consists of sidewalks adjacent to a public street, public parking lots, and public open spaces.

☐ If alcohol will be served on site, a copy of Virginia ABC license.

☐ Pictures (2-3) of the location of the outdoor dining.

### **CONDITIONS OF TEMPORARY OUTDOOR DINING PERMIT**

1. Temporary outdoor dining area:
  - a. Must be located directly adjacent to the establishment, or a location within 100' of the establishment;
  - b. Fencing / barriers must be installed (water-filled security barriers recommended);
  - c. Concrete barriers, provided by the town, are required on town property used for outdoor dining;
  - d. Any modification to the approved plan must be submitted and approved;
  - e. The proposed dining operation and location will not significantly interfere with pedestrian traffic or otherwise constitute a health and safety risk;
  - f. The only permitted furniture within the temporary outdoor dining area are tables, chairs, and properly anchored umbrellas, unless specifically approved by the town. Tents with a capacity greater than 50 or other structures requiring a separate building permit are not permitted unless specifically approved by the town. Any proposed lighting must be approved by the town and any cables must be secured so as not to create a tripping hazard.
2. Must comply with all applicable Governor's Executive Orders, as amended, including, but not limited to:
  - a. Establishments must limit occupancy of both the establishment and the outdoor dining area to 50% of the lowest occupancy load on the certificate of occupancy.
  - b. No more than ten patrons may be seated as a party.
  - c. Tables at which dining parties are seated must be positioned six feet apart from other tables.
3. A copy of this permit must be kept on site at all times and a copy of the capacity certificate must be on display at all times.
4. Hours of operation shall be limited to between 6 am and 11 pm.
5. No other uses are permitted within the Temporary Outdoor Dining Area; including, but not limited to, live entertainment and retail sales.
6. No pets are permitted in Temporary Outdoor Dining Areas, except service animals.
7. No open flames, cooking or food prep is permitted in Temporary Outdoor Dining Areas
8. Businesses are responsible for property disposing of all trash in approved private refuse containers.
9. This permit shall expire 100 days from the Approval Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first.

### **TEMPORARY LICENSE AGREEMENT – WHEN LOCATED ON TOWN PROPERTY**

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement"), is made as of the date it is signed by the Herndon Town Manager (the "Effective Date"), by and between the TOWN OF HERNDON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "Town") and (the "Applicant") (collectively, the "Parties").

WHEREAS, the Town is the owner of the public property or right-of-way, including any adjacent sidewalks and green areas (the "Property"), as shown on EXHIBIT A – LICENSED AREA of the TEMPORARY OUTDOOR DINING PERMIT (the "Permit") attached hereto;

WHEREAS, due to the COVID-19 pandemic, indoor dining service for Applicant's business has been prohibited or limited by Executive Orders of Governor Northam; and

WHEREAS, the Parties desire to allow Applicant to enter upon the Property for the purpose of outdoor seating and dining (the "Use") in conjunction with the Applicant's business during the Term, as defined herein.

NOW, THEREFORE, that for and in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree as follows:

1. The Town hereby grants Applicant temporary use of the property for the purposes described in the permit.
2. This Agreement shall expire 100 days from the Effective Date or 10 days from the lifting or repeal of any Executive Order limiting or prohibiting indoor dining service at the Applicant's business, whichever occurs first (the "term").
3. The applicant shall comply with the terms of the Permit and all applicable town, state, and federal laws and regulations and maintaining at all times any other permit(s) required under applicable law for the use.
4. The parties expressly agree and contract that there shall be no fee for the use of the Town property during this term only.
5. The permission to use the Property granted by this agreement is nonexclusive in nature, and the Town reserves the right to make concurrent use of the Property.
6. Applicant hereby assumes all risk of damage by reason of its occupation of the property caused by any defects therein or activity occurring thereon, whether caused by the negligence of the Town, its officers, agents, or employees, or otherwise, and the applicant hereby agrees to hold harmless and indemnify the Town, its officers, agents, and employees, from and against any such liability for such damage or injury to the extent permitted under the laws of the Commonwealth of Virginia.
7. Applicant shall secure, provide and maintain insurance to protect the Town of such type and in such amount as is described below naming the Town as an additional insured.

This agreement shall not take effect until evidence of insurance is provided to the Town and the Town gives the applicant written confirmation that the type and amount of insurance is accepted.

Insurance limits shall not be less than the following amounts:

**Commercial General Liability** – Combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate. Policy shall be endorsed to name the Town as an additional insured.

**Liquor Liability** (if applicable) – \$1,000,000. Policy shall be endorsed to name the Town as an additional insured.

The insurance required hereunder shall be maintained in effect during the duration of this Agreement. Insurance Policy(s) shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) calendar days advance notice thereof to the Town.

8. Termination: The Town may terminate this Agreement upon 24 hours notice to Applicant for cause.
9. This Agreement is subject to ratification by the Town Council for the Town of Herndon pursuant to Ordinance #20-O-30.
10. This Agreement, having been executed in the Commonwealth of Virginia, the construction and performance thereof or any dispute shall be governed by the laws of Virginia. Venue shall be proper in the County of Fairfax, Virginia.
11. This Agreement contains the entire and only agreement between the parties and it supersedes and merges all pre-existing agreements. Any representations, understandings, promises and any conditions not expressly incorporated herein shall not be binding upon either party or their respective successors in interest.

WITNESS the following signatures and seals: BUSINESS:

By: \_\_\_\_\_

Its: \_\_\_\_\_

TOWN OF HERNDON:

By:

\_\_\_\_\_  
**Town Manager**

\_\_\_\_\_  
**Date**